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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 145

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* HENRIETTA GADSON, on behalf of WILLIE MORGAN,

Petitioner,

against

JOHN E. HOY, Sheriff, County of Westchester,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Chronological Statement of the Case*

On May 5, 1954 the prisoner, Willie Morgan, was arraigned in the County Court, Westchester County, on an information charging him with being a fugitive from justice in the State of South Carolina. At that time bail was

* Pursuant to the provisions of Rule 40, Subdivision 2, of the Supreme Court Rules, numerals in parentheses are page references to the record on appeal to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from the order of the Supreme Court, Westchester County, dismissing a Writ of Habeas Corpus, unless otherwise indicated.

set, and the prisoner was committed to the County Jail of Westchester County, so as to enable the arrest of the prisoner to be made under a Warrant of the Governor of New York State on a requisition of the Governor of South Carolina.

Thereafter and on May 26, 1954 the prisoner was arraigned in said County Court on a Warrant of the Governor of New York State issued by virtue of the Uniform Criminal Extradition Act of the State of New York (27-29). The Court granted an adjournment in order to give the prisoner an opportunity to test the legality of his arrest by means of a Writ of Habeas Corpus.

Thereupon, the prisoner's sister, Henrietta Gadson, made an application in his behalf for a Writ of Habeas Corpus by petition verified the 4th day of June, 1954 (6-10). Said petition alleged the following grounds for the issuance of said Writ of Habeas Corpus:

A. That the demand made by the Governor of South Carolina was not in compliance with Section 830 of the Code of Criminal Procedure of the State of New York (8).

B. That the South Carolina Law which applied at the time of the prisoner's sentence was discriminatory and in violation of the U. S. Constitution (8).

C. That the prisoner's life was in jeopardy because of the fact that overt acts of cruel and unusual punishment accompanied by threats upon his life had been made by the South Carolina Prison Guards of the Calhoun County Chain Gang (9).

On the basis of the aforesaid petition a Writ of Habeas Corpus was allowed on June 7, 1954 and made returnable before the Supreme Court, Westchester County, on June 18, 1954 (5).

A hearing was held on the return date of said Writ, at which time the Sheriff of Westchester County produced the prisoner and made his return (12; 26-51). Oral argument was then heard pertaining to the sufficiency of the South Carolina demand papers, and decision was reserved on that issue (12-14; 24-25). Subsequently, by opinion the Court ruled that said papers from South Carolina were in proper form (52-53). With respect to the other two points raised in the petition, the Court refused to admit testimony regarding the alleged discriminatory law of South Carolina and regarding the alleged cruel and unusual punishment (22; 23).

The writ of Habeas Corpus was therefore dismissed by order made on August 20, 1954 (3-4; 52-53).

Thereafter, on March 21, 1955 the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, unanimously affirmed said order of the Supreme Court, Westchester County (285 App. Div. 974).

Subsequently, on April 28, 1955 the petitioner's motion for leave to appeal to the New York State Court of Appeals from the decision of the said Appellate Division was denied.

Questions Presented

1. Does the scope of inquiry in an extradition hearing extend to the question of cruel and unusual punishment in the demanding state?

2. Were the South Carolina requisition papers, upon which the rendition warrant was issued by the Governor of New York State, sufficient and in proper form?

3. Can the question of the constitutionality of South Carolina penal statutes be heard and determined by the Courts of New York State in an extradition proceeding?

ARGUMENT

I

The scope of inquiry in an extradition hearing does not extend to the question of cruel and unusual punishment in the demanding State and therefore the Supreme Court Westchester County properly refused to hear and determine this question.

An extradition hearing is merely a summary one intended to be kept within narrow bounds. *Biddinger* v. *Commissioner of Police*, 245 U. S. 128, 135. It has, therefore, been well settled that its scope of inquiry is limited and restricted to the following issues only: (1) Whether the papers upon which the warrant was issued by the Governor of the asylum state are sufficient; (2) Whether the indictment charges a crime under the laws of the state seeking the extradition; (3) Whether the crime was committed in the demanding state under its laws; (4) Whether the accused was in the demanding state on the day when the crime is alleged to have been committed; (5) The identity of the alleged fugitive; and (6) Whether the person sought to be extradited is a fugitive from justice. *People ex rel. Higley* v. *Millspaw*, 281 N. Y. 441, 445.

The question of cruel and unusual punishment in the demanding state is significantly excluded from the above list. Accordingly, it has been held that if a fugitive's constitutional rights are being violated in the demanding state, he can and should protect them in the demanding state, where all parties may be heard, where all pertinent testimony will be readily available and where suitable relief, if any is necessary, may be furnished. *Sweeney* v. *Woodall*, 344 U. S. 86; *Johnson* v. *Matthews*, 86 U. S. App. D. C. 376, 182 F. (2d) 677, cert. den. 340 U. S. 828; *People ex rel.*

Johnson v. *Ruthazer*, 198 Misc. 1044, affir'd 278 App. Div. 905.

Therefore, on the basis of the aforementioned decisions, the Supreme Court, Westchester County, was absolutely correct in refusing to admit testimony as to the alleged cruel and unusual punishment in the State of South Carolina (23).

II

The South Carolina requisition papers upon which the rendition warrant was issued by the Governor of New York State are sufficient and in proper form.

The form of the demand by the requisitioning state is governed by Section 830 of the Code of Criminal Procedure of New York State, which reads as follows:

> "§ 830. *Demand; Form.* No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, except in cases arising under section eight hundred and thirty-three or section eight hundred and thirty-four, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon, or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially

charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit judgment of conviction or sentence must be authenticated by the executive authority making the demand."

In absolute compliance with the aforementioned statute the demand papers from South Carolina contained the following: a copy of four separate indictments each charging Willie Morgan with House Breaking and Grand Larceny (38-49), and a copy of an additional indictment charging Willie Morgan with Unlawful Escape (49-51); a copy of the sentence (36); a statement by the Governor of South Carolina that Willie Morgan escaped from confinement in South Carolina (31); and a statement by the Governor of South Carolina that the certificate for extradition and the papers annexed thereto "are hereby certified to be authentic, and in accord with the laws of this State" (31).

It will be noted that Section 830 of the Code of Criminal Procedure does not require that the supporting papers accompanying the demand of the Governor of South Carolina be exemplified or certified. This statute merely makes it mandatory that a copy of the indictment or sentence be included in the supporting papers and that the same be authenticated by the Governor of South Carolina, all of which appears in the South Carolina requisition papers.

The following language by Mr. Justice Walsh in the case of *People ex rel. Kaufman* v. *O'Brien*, 197 Misc. 1019, 1021 is significantly in point:

> "Section 830 of the Code of Criminal Procedure requires that a copy of the indictment must be authenticated by the executive authority making the demand, and this so appears. In absence of contrary showing, the court will assume on habeas corpus regularity of official acts of demanding Governor and all other public

officials and impute verity to their official statements. (*People ex rel. Higley* v. *Millspaw*, 257 App. Div. 40, revd. on other grounds, 281 N. Y. 441.)"

III

The question of the constitutionality of South Carolina penal statutes cannot be heard or determined by the courts of New York State in an extradition proceeding.

As pointed out previously, a fugitive may only raise certain issues in an extradition proceeding, and the question of the constitutionality of penal statutes in the demanding state is not one which may be raised. *People ex rel. Higley* v. *Millspaw*, 281 N. Y. 441, 445.

It, therefore, follows that the Supreme Court, Westchester County, properly refused to hear any proof concerning the alleged discriminatory statutes of the State of South Carolina (22).

CONCLUSION

The petitioner's application for a writ of certiorari should be denied.

Dated: White Plains, New York, July 6, 1955.

Respectfully submitted,

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